



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,364	03/31/2004	Edward K. Y. Jung	SE1-0015-US	1688

80118 7590 08/18/2009  
Constellation Law Group, PLLC  
P.O. Box 220  
Tracyton, WA 98393

EXAMINER
----------

SURVILLO, OLEG

ART UNIT	PAPER NUMBER
----------	--------------

2442

MAIL DATE	DELIVERY MODE
-----------	---------------

08/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/816,364</p>	<p><b>Applicant(s)</b> JUNG ET AL.</p>	
	<p><b>Examiner</b> OLEG SURVILLO</p>	<p><b>Art Unit</b> 2442</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 31 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-180.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). See Continuation Sheet
13. ☒ Other: See Continuation Sheet.

/Andrew Caldwell/  
Supervisory Patent Examiner, Art Unit 2442

Continuation of 3. NOTE: As to proposed amendment to independent claims 108, 154, 179, and 180, dependent claims 9, 19, 37, 84, 85, and 107, and proposed introduction of new claims 181-184, this amendment, if entered, would change the scope of the invention and would necessitate further consideration and search.

Continuation of 12.: The listed documents in the Information Disclosure statement dated 06/17/09 have been considered by making appropriate notations on the attached form, except for Cite No. AE and AF that do not represent U.S. Patent Application Publication Number, as required by column heading.

Continuation of 13. Other: Regarding the rejection of claims 108-128 and 154-178 under 35 U.S.C. 112, first paragraph, applicant's amendment and arguments have been fully considered. However, further consideration is required in order to determine whether the proposed amendment complies with the written description requirement and does not introduce additional issues.

Regarding the rejection of claim 1 under 35 U.S.C. 103(a), applicant's arguments have been fully considered but they are not persuasive. Applicants argue at page 58 of remarks that "Mulgund does not show or suggest the recitations of clause [b] of claim 1". In response to this argument it is noted that one cannot show nonobviousness by attacking references individually where the rejection is based on combination of references. See pages 6-9 of the last OA. Applicants further argue that "Applicant has shown by direct quotations that Independent Claim 1 and the Examiner-cited Mulgund, Bennett and Madden I reference are very different on their faces". In response to this argument it is noted that no statute, rule, or MPEP guideline known to examiner requires direct quotations of the cited references match word by word with the express claim language since applicant's claims are subject to interpretation. Applicants are requested to cite relevant statute, rule, section of MPEP, or Board decision relied on in their argument that would require applicant's claim and cited paragraph(s)/section(s) of a reference be identical on their faces.

Applicants argue at page 61 of remarks that "applicant is unable to locate the portions of the Kung reference, which the office used in rejected the aforementioned claims, in the provisional application". In response to this argument, applicants' attention is directed to claim 32 at page 8 of the provisional application to Kung.

Regarding the rejection of claims 2-180 under 35 U.S.C. 103(a), applicant's arguments have been fully considered but they are not persuasive for analogous reasons as those discussed with respect to claim 1. As to any arguments not specifically addressed, they are the same as those discussed above.